

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

BASF CATALYSTS LLC,

Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

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Civil Action No. 05-11241-JLT

(Electronic filing)

JOINT STIPULATION AND ORDER

THIS STIPULATION AND ORDER is between the United States of America (“United States”) and BASF Catalysts, LLC (“BASF”) (collectively the “Parties”), and is a legally binding agreement between the Parties as of the date it is filed with the Court, and effective as an order of the Court as of the date it is approved by the Court.

WHEREAS, in this case, BASF has asserted claims against the United States under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601-75, and the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6901-92k, pertaining to the Site, which includes an area of approximately 18.3 acres at 30 Taunton Street (on the west of State Route 152) in Plainville, Massachusetts, where Plaintiff owned and operated a manufacturing facility.

WHEREAS, the Parties wish to establish a period of time in which to engage in further efforts to resolve the pending litigation, without the complication and burden associated with the filing of claims by the United States against BASF.

NOW, THEREFORE, the Parties agree, and IT IS HEREBY ORDERED that:

1. Except with respect to claims filed or administrative actions taken by the United States after May 1, 2008, BASF shall not assert in this case, or any other case or administrative proceeding, that any claim or administrative action by the United States related to the Site (including, but not limited to, efforts by the United States to recover CERCLA response costs or natural resource damages) is precluded by the rules pertaining to merger and bar, res judicata, or Federal Rule of Civil Procedure 13(a), or any similar rule or regulation, and shall make no defense or avoidance based on such argument.

2. With respect to any claims filed or administrative actions taken by the United States related to the Site after May 1, 2008, BASF reserves the right to plead or otherwise assert any defenses it may have to such claims, including, without limitation, the defense that such claims or actions are precluded by the rules pertaining to merger and bar because the claims or administrative actions were not raised in this Action consistent with Federal Rule of Civil Procedure 13(a) or any similar rule or regulation.

3. Nothing in this Stipulation and Order shall be construed as an admission of any issue of law or fact by BASF or the United States.

4. Nothing in this Stipulation and Order shall be construed to limit the authority of the United States to undertake any action pursuant to applicable law or regulation. This Stipulation in no way affects or relieves any Party of its responsibility to comply with any federal, state, or local law or regulation. Except as specifically provided herein, nothing in this Stipulation and Order alters the rights and/or liabilities of the Parties with respect to any claims that have been or may be filed in this case.

5. This Stipulation and Order represents the entire agreement between the Parties

regarding the timing of the assertion of defenses by BASF that are based on the rules pertaining to merger and bar, or Federal Rule of Civil Procedure 13(a), or any similar rule or regulation, with respect to claims filed or administrative actions taken by the United States. This Stipulation and Order may not be enlarged or altered except in writing signed by the Parties and approved and entered as an Order of the Court.

The undersigned representative of each Party certifies that he is fully authorized to enter into the terms of this Stipulation and Order and to legally bind such Party to this document.

SO ORDERED this ____ day of _____ 2008.

The Honorable Joseph L. Tauro
United States District Judge

Respectfully submitted,

FOR THE UNITED STATES:

RONALD J. TENPAS
Acting Assistant Attorney General
Environment & Natural Resources Division

Dated: January 25, 2008

/s/ Stephen E. Crowley
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FOR PLAINTIFF BASF CATALYSTS LLC:

Dated: January 25, 2008

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th Day of January 2008, a true and accurate copy of the foregoing Motion was filed electronically with the Court's CM/ECF system, which automatically notifies the below counsel of record of the filing, via e-mail, as follows:

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